IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.

F.A. No. 695/2001
(Old No. 645/1992)

1- State of U.P.

2- Regional Transport Officer, Garhwal, Region,
Pauri Garhwal ……Appellants.

Vs.

1- Smt. Santosh Devi W/o Babu Lal
R/o Upper Bazar, Joshimath,
District Chamoli.

2- The New India Insurance Company Ltd.
Eslehall, Dehradun ….Respondents.

Smt. Beena Pandey, learned Standing Counsel for State of U.P.
Sri J.P. Joshi, learned counsel for appellant No.2.
Sri Alok Singh, Senior Advocate, assisted by Ms. Mamta Joshi, learned counsel for the respondent No.1.

(Hon'ble B.C. Kandpal, J.)

This appeal has been filed by the State of U.P. as well as the R.T.O. Pauri Garhwal, against the judgment and decree dated 14-8-1992 passed by the District Judge, Chamoli in Civil Suit No. 14 of 1988 Smt. Santoshi Devi Vs. State of U.P.

2- Brief facts of the case are that Smt. Santoshi Devi was the owner of Truck No. U.T.S. 436. The said truck was requisitioned by the State of U.P. for Lok Sabha election purposes and written information was sent to the plaintiff on 6.12.1984. The said Truck along with its driver and cleaner was handed over to the R.T.O. by the plaintiff on 19.12.84. Thereafter the truck was given in the supurdagi of Election Officer, Faizabad. On 19-12-1984, at about 7 P.M. when the Truck was being carried to Faizabad, it met with an accident near Dhampur Chungi Chauki. The driver and cleaner of the truck sustained injuries. The truck was also damaged in the accident. On the instruction of the defendant/appellant the truck was carried to the workshop Kotdwara for necessary repair. The plaintiff got it repaired and the bills were sent to the defendant/R.T.O. for payment.

The plaintiff demanded Rs. 9000/- as rent of the truck and Rs. 39,154-30 towards repair expenses. The plaintiff also wrote to the New India Assurance Company Haridwar, with which the offending truck was insured, to pay the damages caused to the truck, but she was informed that the truck was requisitioned by the State Government for election purposes, hence the State is liable to pay compensation. The plaintiff filed suit for recovery of total sum of Rs. 69,823-60, which included the rent of the vehicle, repair charges and the interest for three years @ 15% per annum.

3- The defendant R.T.O. contested the suit by filing the W.S. and admitted that the offending truck was requisitioned for election purposes. The accident was also admitted. However, it was alleged that the truck did not reach to its destination at Faizabad and it met with accident in the way while going to Faizabad, hence the liability of damages caused to it, is on the shoulder of the owner herself. It was also alleged that plaintiff did not submit the bills of repairs within the requisition period, hence she cannot get the damages. The suit is not maintainable as the notice U/S 80 C.P.C. was not in accordance with the provision of C.P.C.

4- The defendant New India Assurance Company also filed its W.S. and alleged the vehicle was requisitioned for government purposes, hence by virtue of condition No. 7 of general exception of insurance policy the insurance company is absolved from the liability to pay any compensation.

5- The trial court framed the relevant issues in the suit. Thereafter parties adduced evidence. The trial court on hearing learned counsel for the parties and perusing the material available on record, decreed the suit of the plaintiff/respondent Smt. Santoshi Devi and directed that the appellant Nos. 1 and 2 shall pay a sum of Rs. 69,823=60 P. as compensation along with an interest.

6- Feeling aggrieved by the aforesaid judgment and decree the State of U.P. and the R.T.O. Pauri Garhwal have come up in appeal.

7- Heard learned counsel for the parties and perused the material available on record.

8- Learned counsel for the appellant has firstly argued that it is true that the offending truck in question was requisitioned by the State of U.P., but as the vehicle had not gone to its destination and in the mid way it met with an accident, therefore the State of U.P. has no liability to pay compensation. It has further been submitted that the vehicle in question was Insured with New India Assurance Company at the time of accident, therefore, whatever amount of the compensation has been awarded by the court below the same has to be paid by t he insurer of the vehicle.

9. The evidence on record shows that eh vehicle in question was requisitioned by the R.T.O. Pauri Garhwal on behalf of the State of U.P. for the election purposes. The vehicle had to go to Faizabad on election duty. It is an admitted fact that the vehicle met with an accident at Dhampur, but this fact cannot be denied that the vehicle was requisitioned by the R.T.O. Pauri Garhwal, who was working under the State of U.P. at the time of the accident. The argument advanced by the learned counsel for the appellants does not carry any force. It is an admitted fact that at that time of the accident the vehicle was under the control of the Ste of U.P. as it has already been requisitioned by the R.T.O. Pauri Garhwal working under the control of State of U.P. Therefore, the State of U.P. can not be absolved from the liability of paying the amount of compensation to the claimant/respondent.

10- As far as the insurance of the vehicle in question is concerned, it is true that the vehicle in question was insured with New India Assurance Company at the time of the accident, but from the insurance policy filed by the insurance company before the court below, reveals that whenever the vehicle would be requisitioned by the State Government, then during that period in case if any damage is caused to the vehicle or by the vehicle, then the insurance company

would not be liable to pay the amount of compensation on account of that accident or damages. Condition No.7 of general exception in insurance policy is quite clear to this effect. The trial court framed issue No.6 in this regard and has discussed this point in detail. I do not find any infirmity in the finding recorded by the trial court and I am also of the view that in view of a specific condition mentioned in the insurance policy, it can never be held that insurance company would be liable to pay the amount of compensation in case if the vehicle had already been requisitioned by the State of U.P. and the same was also playing under the control of Ste of U.P. at the time of accident.

11- No other point has been pressed.

12- On the basis of assessment of evidence on record I come to the conclusion that the impugned judgment and order passed by the court below does not suffer with any illegality and infirmity.

13- The trial court has fixed liability of the State of U.P. as well as the R.T.O. Pauri Garhwal to pay the amount of compensation by making the observation that both the parties are jointly and severally liable to pay the amount of compensation as the vehicle was under the control of appellant Nos. 1 and 2. This finding recorded by the trial court appears to be wrong. It is true that the R.T.O. Pauri Garhwal requisitioned the vehicle for the election purposes but at the time of the accident the R.T.O. was working under the control and supervision of State of U.P. therefore, the R.T.O. Pauri Garhwal cannot be held liable to pay the amount of compensation in any manner. It is ultimately the liability of the state of U.P. to pay the amount of compensation in this case.

14- I, therefore, am of the view that the impugned judgment and decree dated 14-8-92 passed by the trial court requires modification upto the extent that the suit is to be decreed against the appellant No.1, the State of U.P. only.

15- For the reasons stated above I dismiss the appeal with the observation that the State of U.P., the appellant No.1 is liable to pay the amount of compensation as has been awarded by the trial court by way of impugned judgment and decree dated 14-8-1992.

(B.C. Kandpal, J.)

Dated: 15-12-2006
ISB